gage. The appellant and her family were recalcitrant and were determined to frustrate the respondents in their attempt to sell the said property. The respondents were not bound to wait till a more advantageous sale could be effected. The respondents sold to Tyebally with the owner refusing to give possession. It was a sale without possession. In our view the respondents had acted in a reasonable manner.

It was for the appellant to prove on a balance of probabilities that the $300,000 obtained by the respondents was not the best price obtainable in the circumstances of this case and at the time in question. This the appellant had failed to do.

For these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors: *Chor Pee & Co.; Ramdas & Wong.*

CHIN HWA TRADING PTE. LTD. v. UNITED OVERSEAS BANK LTD.

[O.C.J. (Wee Chong Jin C.J.) March 8, 1985]

[Singapore – Originating Summons No. 463 of 1984]

Contract – Auction sale of mortgaged property – Absence of planning approval for subdivision of property by original purchaser – Whether sale agreement tainted with illegality – Planning Act (Cap. 279), ss. 9(3) (a) & (9).

Land Law – Conveyancing practice – Absence of planning approval for subdivision of property by original purchaser – Whether sale agreement tainted with illegality – Meaning of "subdivide" – Planning Act (Cap. 279), ss. 2, 9(3) & (9) – Registration of Deeds Act (Cap. 281) s. 14(1)(c) – Land Titles Act (Cap. 276), s. 144(1).

The plaintiff company (the sub-sub purchaser) was the successful bidder at an auction sale of a property put up for sale on April 18, 1984 by the defendant bank in exercise of its power of sale as mortgagee. This piece of property was one of the lots the original purchaser had subdivided into separate factory units without obtaining any prior permission from the Planning Authorities. On May 23, 1984 the defendants' solicitors served a notice on the plaintiffs' solicitors calling upon them to complete the purchase of the property within 21 days. The plaintiffs' solicitors made an application to court to determine whether the auction sale agreement of April 18, 1984 was "tainted with illegality" because it amounted to an agreement to complete the sale and purchase of property by an illegal act in breach of section 9(3) (a) of the Planning Act. It was contended that the contract was not one that the mortgagee could lawfully perform because in order to perform it the mortgagee had to execute an instrument assigning to the sub-sub purchaser *inter alia* "all the estate right and title to the property" and which instrument sub-divides land within the meaning of the Planning Act.

Held: (1) it must be implicit in the definition of "subdivide" in section 2 of the Planning Act that it is the instrument which becomes capable of being registered or being included in a separate folio of the land register before a person can be said to subdivide land within the meaning of the Planning Act. The reason is because the Registration of Deeds Act and the Land Titles Act provide for the registration of instruments affecting land and not of land;

(2) in the present case the agreement itself was clearly not capable of becoming registered under the Registration of Deeds Act or being included in a separate folio of the land register under the Land Titles Act and accordingly the agreement did not subdivide land within the meaning of the Planning Act and did not infringe the provision of section 9(3) of the Planning Act;

(3) the auction sale agreement was therefore lawful and it was lawful for the parties to the agreement to complete the Sale and Purchase of the property;

(4) costs should be in favour of the mortgagee.

ORIGINATING SUMMONS.

C. C. Tan for the plaintiffs.
R. Quek for the defendants.

Cur. Adv. Vult.

Wee Chong Jin C.J. : The plaintiff company was the successful bidder at an auction sale of a property put up for sale on April 18, 1984 by the defendant Bank in exercise of its power of sale as mortgagee. The property was described in the published Particulars of Sale as follows:

"Property	Lot No.	Mukim	Floor Area	Title"
No. 37, Kallang Pudding Road #01-12 (formerly known as G 12/14) Block B Tong Lee Building Singapore	3142 part	24	approx 282 sq.m.	Freehold

The auction sale was subject to the Singapore Law Society's Conditions of Sale 1981 and the auction Conditions of Sale, of which Conditions of Sale 4 and 5 are material and read as follows:

"4. The purchase shall be completed and the balance of the purchase money shall be paid one month from the

date of sale herein at the office of Messrs. Shook Lin & Bok, 2 Battery Road #06-00, Malayan Bank Chambers, Singapore. On completion the Vendor shall by deed assign all the rights title and interest under an Agreement dated September 26, 1978 made between Seah Soon Hung of the one part and Seng Cheong Hong Pte. Ltd. of the other part and all the estate right and title to the property to the Purchaser. If from any cause whatsoever (other than the wilful default of the Vendor) the purchase herein shall not be completed on the day fixed for completion, the Purchaser shall pay to the Vendor interest on the balance of the purchase price at the rate of twelve per cent (12%) per annum and if the Purchaser shall fail to comply with any of the terms hereof the Vendor on their giving twenty one (21) days' previous notice in writing of their intention so to do may elect to treat this Agreement as cancelled, in which event the deposit paid shall be forfeited to the Vendor and this Agreement shall become null and void and neither party shall have any claim against the other for compensation or otherwise. The Purchaser shall not be entitled to any compensation for the Vendor's delay unless contumacious.

5. The Vendor is selling a Mortgagee and the concurrence of any person or persons interested in the property shall not be required nor shall the Vendor be required to enter into any covenant for title."

On May 23, 1984 the defendant Bank's (hereinafter referred to as "the mortgagee") solicitors served on the plaintiff company's (hereinafter referred to as "the sub-sub-purchaser") solicitors a notice dated May 22, 1984 calling upon the sub-sub-purchaser to complete the purchase of the property within 21 days from the date of the notice. On May 31, 1984 the sub-sub-purchaser's solicitors replied stating that they had "considerable concern whether its completion may not be illegal under section 9 of the Planning Act in view of the absence of the planning approval for the subdivision of the ground floor of the property".

In this application the court is asked, *inter alia*, to declare whether or not

(1) the auction agreement of sale made between the sub-sub-purchaser and the mortgagee is lawful and

(2) it is lawful for the parties to the agreement to complete the sale and purchase.

The undisputed facts are these. Tong Lee Co. Pte. Ltd. ("the Developer") owned a piece of land containing an area of 128215 square feet marked on the Government Resurvey Map as Lot 3142 of Mukim XXIV. The Developer obtained planning approval to develop the land and to build two Blocks of nine-storey Flatted Factories (Block A and Block B) on it.

On July 19, 1978 the Developer entered into an Agreement to sell to one Seah Soon Hung ("the Original Purchaser"), the whole of the Ground Floor of Block B. Clause 11 of the Agreement, so far as material, reads:-

"11. The Vendor shall at its own cost and expenses obtain (a) the approval of the Competent Authority under Section 9(3) of the Planning Act (Cap. 279) and (b) the said Subsidiary Strata Certificate of Title for the separate disposal of the (whole of the Ground Floor of Block B) . . ."

Clause 12 of the Agreement reads:

"12. The sale and purchase shall be completed at the office of the Vendor's solicitors . . . fourteen (14) days after the receipt by the Purchaser or his Solicitors of the Notice of the Vendor or its Solicitors that the Subsidiary Certificate of Title in respect of the (whole of the Ground Floor of Block B) has been issued."

The Original Purchaser privately subdivided the Ground Floor of Block B into 12 separate factory units without obtaining any prior permission to subdivide the Ground Floor of Block B from the competent authority under section 9(3) of the Planning Act (Cap. 279) and on September 26, 1978 entered into an Agreement (the sub-sale Agreement) to sell to a company known as Sng Cheng Hong Pte. Ltd. ("the Sub-purchaser") one of the privately subdivided factory units described as Unit G-12/14. In the sub-sale Agreement it is recited that the original Purchaser had paid the Developer the full purchase price in accordance with the terms of the original Sale Agreement dated July 19, 1978 and that "the (Original Purchaser) has applied or will be applying either by himself or through the assistance of the (Developer) to the competent authority for the subdivision of the (Ground Floor of Block B) into separate units as shown in the plan annexed hereto and thereafter (after such subdivisional approval has been granted) to apply in the similar manner to the Registrar of Land Title and/or the competent authority for a separate Subsidiary Strata Certificate relating to (Unit G-12/14) to be issued in accordance with the provisions of the Land Titles (Strata) Act, Cap. 277."

The material clauses of the sub-sale Agreement of September 26, 1978 read:

"1. The Vendor shall sell and the Purchaser shall purchase free from encumbrances on completion as provided under Clause 12 herein (Unit G-12/14) being part of the premises on the Ground Floor, Block B of the said Building to be comprised in a Subsidiary Strata Certificate of Title under the provisions of the Land Titles (Strata) Act (Cap. 277).

2. The Vendor shall at his own expense obtain the said Subsidiary Strata Certificate of Title for the sale of the said (Unit G-12/14).

11. The Vendor shall at his own cost and expense obtain (a) the approval of the Competent Authority under Section 9(3) of the Planning Act (Cap. 279) and (b) the said Subsidiary Strata Certificate of Title for the separate disposal of the said Premises but any delay in obtaining such approval shall not be a ground for any delay by the Purchaser in the payment on due date of any of the instalments of the purchase price mentioned in Clause 4 hereof and the interest thereof (if any) and also shall not be ground for any action claim or demand for damages by the Purchaser against the Vendor.

12. The sale and purchase shall be completed at the office of the Vendor's Solicitors . . . fourteen (14) days after the receipt by the Purchaser or his Solicitors of the Notice of the Vendor or of its Solicitors that the Subsidiary Strata Certificate of Title in respect of the said (Unit G-12/14) has been issued.

26. Notwithstanding completion of the sale and purchase herein the terms and conditions of this Agreement shall remain in full force and effect as between the Vendor and the Purchaser in so far as the same are not fulfilled."

On November 8, 1982 the original Purchaser executed a Deed of Assignment in favour of the Sub-Purchaser wherein, after reciting the original Sale Agreement dated July 19, 1978; that the Original Purchaser had up-to-date paid the Developer "the full purchase price of $319,200.00 in respect of Unit G-12/14 and had since observed and performed the terms of the original Sale Agreement and that the Developer "has applied or will be applying to the Registrar of Titles and/or other competent authority for separate Subsidiary Strata Certificates of Title relating to the (whole of the Ground Floor of Block B) to be issued in accordance with the provisions of the Land Title (Strata) Act, Cap. 277", the Original Purchaser in consideration of the purchase price paid by the Sub-Purchaser assigned to the Sub-Purchaser "All his right title estate and interest in (Unit G-12/14) and all its right benefit advantages and remedies arising out of the Original Sale Agreement and in so far as it relates to" (Unit G-12/14).

On the same date (November 8, 1982) the Sub-Purchaser obtained a loan from the mortgagee and by a Deed of Assignment assigned to the mortgagee" all its right title interest benefits advantages permits licences which the Sub-Purchaser had in under or arising out of the Sale Agreement and the Deed of Assignment dated November 8, 1982 and all remedies for enforcing the same and all the estate right title and interest of the Sub-Purchaser in Unit G-12/14 under the Sale Agreement and the Deed of Assignment dated November 8, 1982" as security for the repayment of the said loan. Clause 10 of the Assignment to the mortgagee provides that in exercising the power of sale the mortgagee may sell assign and dispose of all the right title estate and interest of the Sub-Purchaser in the mortgaged property.

It is also undisputed that

(1) no subdivisional approval from the competent authority has been obtained for the subdivision of the building described as Block B into separate factory units one of which was the ground floor or of the ground floor of Block B into twelve separate factory units;

(2) subdivisional approval would not be granted until the construction of Block B is completed in accordance with the approved building plans or approved amendments thereto;

(3) no subsidiary strata Certificate of Title in respect of Unit G-12/14 has been issued.

First, it is contended on behalf of the sub-sub-purchaser that as no approval has been given by the competent authority as provided in section 9(3)(a) of the Planning Act for the subdivision of the ground floor of Block B into more than one separate factory unit, the auction sale agreement of April 18, 1984 is "tainted with illegality". It is said that the contract is illegal because it amounts to an agreement to complete the sale and purchase of the property by an illegal act in breach of section 9(3) and punishable under section 9(9).

The argument, as I understand it, is that it is a contract that the mortgagee could not lawfully perform because in order to perform it the mortgagee has to execute an instrument assigning to the sub-sub-purchaser, *inter alia*, "all the estate right and title to the property" and which instrument subdivides land within the meaning of the Planning Act.

Section 2 of the Planning Act defines the expressions "land" and "subdivide" unless the context otherwise requires as follows:

"land" includes buildings and any estate or interest in or right over land;

"subdivide" – a person is said to subdivide land if, by any deed or instrument, he conveys, assigns, demises or otherwise disposes of any part of the land in such a manner that the part so disposed of becomes capable of being registered under the Registration of Deeds Act or in the case of registered land being included in a separate folio of the land

register under the Land Titles Act, and "subdivision" shall be construed accordingly:

Provided that a lease for a period not exceeding seven years without the option of renewal or purchase shall not be deemed to be a disposal within the meaning of this definition;"

Section 9(3) (a) provides as follows:

"(3) No person shall subdivide any land unless –

"(a) he has obtained the written permission of the competent authority, and a copy of its written permission has been forwarded by the competent authority to the Collector together with a plan of the permitted subdivision on which dimensions of all lots, widths of streets and backlanes and such other particulars as the competent authority may consider necessary, are shown;"

Section 9(9) provides as follows:

"(9) Any person who contravenes the provisions of subsection (1) or (3) of this section, is guilty of an offence under this Act and is liable on conviction to a fine not exceeding three thousand dollars and in the case of a continuing offence, to a fine not exceeding one hundred dollars for each day after the first day during which the offence is continued."

Whether or not the argument advanced on behalf of the sub-sub-purchaser is right depends on the construction of the expression "subdivide" as defined in section 2. In my opinion it must be implicit in that definition that it is the instrument which becomes capable of being registered or being included in a separate folio of the land register before a person can be said to subdivide land within the meaning of the Planning Act. The reason is because the Registration of Deeds Act and the Land Titles Act provide for the registration of instruments affecting land and not of land.

In the present case the agreement itself is clearly not capable of becoming registered under the Registration of Deeds Act or being included in a separate folio of the land register under the Land Titles Act and accordingly the agreement does not subdivide land within the meaning of the Planning Act and does not infringe the provisions of section 9(3) of the Planning Act.

The remaining question is whether the deed of assignment of all the estate right and title to the property which the mortgagee must execute in performance of the contract amounts to subdividing land within the meaning of the Planning Act.

If the property is governed by the Registration of Deeds Act and has not been surveyed and demarcated in accordance with the provisions of section 14(1)(c) of that Act the deed of assignment cannot be registered.

Section 14(1)(c) reads:

"14. – (1) No instrument or memorial shall be registered –

(c) unless the boundaries of all lands affected thereby have been surveyed and demarcated to the satisfaction of the Chief Surveyor, or unless the Chief Surveyor certifies to the Registrar that a plan showing the boundaries of all the lands affected thereby and certified as correct by a licensed surveyor has been lodged with him and that the plan has been approved by him for the purposes of this subsection;"

On the undisputed facts, the property has not been surveyed or demarcated in accordance with the requirements of section 14 and accordingly the mortgagee's deed of assignment when executed would not be capable of becoming registered under that Act.

If the property is part of land which has been included in a separate folio of land register kept by the Registrar of Titles under the Land Titles Act, the deed of assignment when executed by the mortgagee cannot be registered under that Act unless the provisions of section 144(1) have been complied with. Section 144(1) reads:

"144. – (1) Except as provided in this section, the Registrar shall not register any instrument affecting part of the land in a folio of the land register until he is satisfied that –

(a) the authority for the time being charged with the duty of controlling or supervising the subdivision of the land has certified that the lawful requirements of that authority relating to subdivision have been complied with; and

(b) the boundaries and dimensions of part of the land in a folio of the land register shown in the plan annexed to any instrument are in accordance with the final boundaries and dimensions shown in the plan lodged with and approved by the Chief Surveyor."

It is common ground that the authority referred to in section 144(1) has not certified that the lawful requirements relating to subdivision have been complied with and accordingly the deed of assignment would not be an instrument which subdivides land within the meaning of the Planning Act and the provisions of section 9(3) would not be infringed and I must therefore declare that (1) the auction sale agreement is lawful and (2) it is lawful for the parties to the agreement to complete the sale and purchase of the property. There must

also be an order for costs in favour of the mortgagee in these proceedings.

Order accordingly.

Solicitors: *Tan, Rajah & Cheah; Shook Lin & Bok.*

J.S. HASTINGS v. GREEN & COLLIER BULLION PTE. LTD.

[O.C.J. (Rajah J.) April 4, 1985]

[Singapore – Suit No. 2990 of 1982]

Contract – Commodity trading – Gold Exchange of Singapore – Trading in 100 oz. or kilobar lot – Ambiguity in contract – Plaintiff's intention – Claim against defendants – New Bye-Laws of the Gold Exchange.

Commodity Trading – Gold Exchange of Singapore – New Bye-Laws of Gold Exchange – Rules for Commodity Trading.

In this case, the plaintiff, a retired rubber broker, claimed the sum of S$11,518.15 and costs against the defendants, who were gold bullion dealers and brokers. Gold dealings for prompt or future delivery on the Gold Exchange of Singapore Pte. Ltd. began in 1978 in units or lots of 100 ounces and in 1980 kilobar unit or lot was introduced. The plaintiff was advised by a director of the defendants that the best contract for the plaintiff would be a kilobar contract, the smaller contract. The contract in issue (1AB10) was drafted by the defendants but the words "Singapore Gold" appeared on the contract, instead of "Singapore Gold 100 oz." or "Singapore Gold kilobar". The plaintiff was only interested in trading in kilobar lots.

Held: (1) the plaintiff was only interested in trading in kilobar lots and further as the defendants were responsible for the drafting of the contracts for the purchase of futures of gold, it was for them to spell out the contract in accordance with the New Bye-laws, the Rules for Commodity Trading and the Trading Terms. If this had been done, then under the Commodity column in 1AB10 either the words "Singapore Gold 100 oz." or "Singapore Gold kilobar" would have appeared;

(2) judgment for the plaintiff was given in the sum claimed *i.e.* S$11,518.15 and costs, plus interest at 8% *per annum* from date of writ up to date of judgment.

CIVIL SUIT.

Chim Hou Yan for the plaintiff.
Miss Lai Siu Chiu for the defendants.

Cur. Adv. Vult.

Rajah J.: The defendants are and were at all material times gold bullion dealers and brokers having their business at 55 Market Street, Singapore.

From the evidence it would appear that the business of dealing in gold for prompt or future delivery on the Gold Exchange of Singapore Pte. Ltd. (Gold Exchange) was started sometime in 1978 and then only in units or lots of 100 ounces. Later in June 1980 the kilobar unit or lot was introduced.

The following bye-laws of the New Bye-Laws of the Gold Exchange passed on April 25, 1981 appear to me to be relevant to the instant case:

(1) *A "100 oz. lot"* means in relation to a prompt contract three kilobars of gold with a minimum fineness of 999.9 parts per one thousand equivalent to 96.444 fine ounces and in relation to a futures contract 100 fine ounces (Bye-Law 1).

(2) *A "kilobar lot"* means in relation to both prompt and futures contract one kilobar of gold with a minimum fineness of 999.9 parts per one thousand equivalent to 32.148 fine ounces (Bye-Law 1).

(3) *A prompt contract* is a contract for the immediate delivery of gold and *shall be concluded in a 100 lot or kilobar lot* (emphasis mine) (Bye-law 4).

(4) *A futures contract* is a contract for the delivery of gold in a particular present or future month and *shall be concluded in a 100 oz. lot or kilobar lot* (emphasis mine) (Bye-law 5).

(5) *Trading* shall be conducted in a 100 oz. lot or kilobar lot, as the case may be, or in multiples thereof and offers shall be made and accepted accordingly (Bye-law 7).

Sometime in July 1981 the plaintiff, a retired rubber broker of good repute, had discussions with a Mr. Derek Mitchell (Mitchell), a director of the defendant Company who was in charge of its day to day administration, on the prospect of opening a gold trading account with the defendants. Mitchell had been a colleague of his with Messrs Lewis and Peat, the brokers. In the course of their discussion Mitchell suggested to the plaintiff that the best contract for him would be a kilobar contract, the smaller contract. The plaintiff accepted his advice. This aspect of the case is borne out by